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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 90 of 2008
Cuttack, this the 22nd day of June, 2011

Laxmikanta Giri Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

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CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Laxmikanta Giri, aged about 38 years, Son of Late Krutibash Giri Village/Post-Nabara, PS-Singla, Dist. Balasore, presently working as Loco Pilot (Goods), Grade II in the East Coast Railway, Khurda Road, Dist. Khurda.

.....Applicant

By legal practitioner: M/s. B.Dash, J.Dash, Counsel.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Additional Divisional Railway Manager, Khurda Road, Jatni, Dist. Khurda.
3. Senior Divisional Mechanical Engineer, East Coast Railway, Khurda, Dist. Khurda.

....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

Applicant is a Loco Pilot (Goods) Grade II in the East Coast Railway, Khurda Road, Khurda. Through Memorandum Annexure-1 dated 10.10.2006, he faced disciplinary proceedings under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The Memorandum of charge reads as under:

“That the said Shri L.K.Giri, Designation: Loco Pilot (Goods)/KUR under Ch. Crew Controller/Khurda Road/E.Co.Railway while functioning as L.P. During the period.

On 27.7.2006 you were working the Goods Train No.E/TM (E)/NDL, with load 71/72 ½, Ex-RQP-GHGN hauled by Loco No. 23563 WAG 5/ASN left RQP at 9.17 hours and derailed at Km.431/16 between RQP-GHGN on single line section at approximately 9.25 hours. Total 4 TM(E) derailed starting from 18th to 21st wagons from engine. The single line blocked from 9.25 hrs to 18.30 hrs on 27.7.2006. The derailment occurred due to "Application of sudden brake by failing to control the train before entering into loop line.

The sharp reduction in speed has caused the jumping of wheel.

Thus, you have failed to maintain devotion to duty and violated rule 3.1 (ii) of Railway Services (Conduct) Rules, 1966 and for this rendered yourself liable for disciplinary action under Railway Servants (D&A) Rules, 1968 as amended from time to time."

2. The matter was enquired into. Copy of the report of the IO was supplied to the Applicant through letter under Annexure-4 dated 23.8.2007. The findings of the IO read as under:

"a) The sudden application of brakes is not established with any evidence. The RDSO also confirmed that the emergency brakes application does not cause any derailment although it is overruled as because it is not applicable to OTE and the circular did not clarify for OT trains.

b) The track/Wagon readings available on records do not give any scope to say that the derailment occurred due to track or Wagon defects.

c) The station staff, LC/Gate man of RQP and LC/Gate and between RQP and GHGN did not confirmed that there was any abnormality in the passing train. The Charge in annexure-1 "The sharp reduction in speed has caused the derailment" is proved with the evidence of PW-6, PW-7 and PW-II.

d) The track at the derailed spot having 3' curve left hand middle of the curve, normally the derailment in the curve will take place due to defect in P/Way, Wagon defect, uneven loading and bad engineman ship.

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e) Further the analysis of speed chart also shows that the train speed reduction from 27 kmph to 22 kmph in 134 seconds traveling 94 mts. From 22 kmph to 11 kmph in 13 seconds traveling 64 mts and from 11 kmph to 0 kmph in 06 seconds traveling 10 mts.

Findings:

After going through the case, examinations/ cross-examinations of PWs and relevant documents, I conclude that a part of the charge "Sharp reduction in speed has caused the derailment" is PROVED."

3. The Applicant was supplied copy of the report of the IO by the DA in letter under Annexure-4 dated 23/27-08-2007. The letter dated 23/27-08-2007 reads as under:

"You are advised to submit your representation, if any, to the undersigned within 15 (fifteen) days of receipt of this letter; failing which, it would be considered that you have no reprehension to make and action will be taken against you under D&A Rules."

4. The Applicant submitted his reply to the report of the IO in Annexure-6 dated 12.09.2007. Thereafter, the Disciplinary Authority imposed the punishment in letter under Annexure-7 dated 17/27-09-2007.

It reads as under:

"You were issued with a major penalty charge memorandum with above reference, being found responsible primarily by a JA grade enquiry committee for the derailment of 4 TM (E) of Train No. E/TME/NDL at Km 431/16 between RQP-GHNH section on 27.7.2006.

The charge sheet was acknowledged by you on date 07.11.2006. To give you natural justice Sri I.Khan, Sr. LI/KUR appointed as Inquiry Officer to enquire into the matter as per D&A procedure and establish the truth on date 14/19-02-2007.

I have gone through the enquiry proceedings, evidence adduced during the course of enquiry⁶ and your representation dated 17.10.2007 and 12.09.2007.

I found you guilty of the charges levelled against you for applying the sudden brake and also for sharp reduction of

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speed from 37 Kmph to 27 Kmph in 27 seconds, 27 Kmph to 21 Kmph in 13 seconds, 21 Kmph to 11 Kmph in 12 seconds and 11 Kmph to 0 Kmph in 6 seconds which confirms the bad controlling of OT empty wagons while a derailment probe OT empty negotiating 3 curvature. However, in down gradient with a curvature where a maximum numbers of derailment occurred on account of OT (empty) wagons, say due to derailment prone a JPO being issued by CME, COM, CSO, CEE, CE in Oct-04 to take number of precautions to avoid such derailment.

Hence, considering all the aspects of the instant case, I have applied my mind and decided that you are hereby reverted to Loco Shunter/Gr-I from Loco Pilot (G), Gr-II is the pay scale of Rs.5000/- to 8000/- for 18 months with cumulative effect and your pay may be operated at Rs.5300/- which will in force after the vacation of present punishment and on expiry of punishment period you will loose your seniority.

Speaking order:

Shri L.K.Giri, LP (G)/KUR was issued with a major penalty charge sheet being found primary responsible by a JA grade committee for derailment of 04 Tank empty wagons at KM No. 431/16 between RQP-GHNH stations due to sudden brake application.

Accordingly, a major penalty charge sheet was issued and inquiry officer, Shri I.Khan, Sr. Loco Inspector conducted detailed inquiry and also found the charge is proved that "the sharp reduction of speed is the cause of derailment".

Shri L.K.Giri in his defence statement cited RDSO's DO No. SFY/40/Pt.II dated 19.02.1999 in which emergency brake application is not the cause of derailment. This is implied to almost every type of wagons except to OT (empty)., Due to large wheel base and instability in nature, this requires a great skill in driving especially in down gradient with a curvature. Due to maximum numbers of derailment on account of OT (empty) wagons a JPO being issued by CME, COM, CSO, CEE, CE in Oct-04 to taken number of precautions to avoid derailment. It needless to point out that **Shri L.K.Giri have a bad skill in driving for OT empty which he is undergoing punishment.**

Also L.K.Giri defended himself that wagon reading could not be taken. In fact wagon reading could not be taken as it was not a position to rerail as the accident occurred in both side cutting location. But all the safety fitting of tank wagons were perfectly in intact condition.

Reduction of speed from 37 Kmph to 27 Kmph in 27 seconds, 27 Kmph to 21 Kmph in 13 seconds, 21 Kmph to 11 Kmph in 12 seconds and 11 Kmph to 0 Kmph in 06 seconds confirms bad controlling of OT empty wagons and sharp reduction of speed. The derailment occurs primarily due to bad controlling of derailment prone OT empty while negotiating 3 curvature.

Shri L.K.Giri presently undergoing punishment and already reverted to Loco Shunter and this is a consecutive case of derailment of Shri L.K.Giri. This is mid section derailment and keeping in mind punishment recommended by Railway Board mid-section derailment, Shri L.K.Giri may be reverted to Loco shunter in the pay scale 5000-8000/- for 18 months with cumulative effect and pay may be reduced from Rs.5600/- to Rs.5300/-.”

5. As per the letter under Annexure-9 dated 19.08.2008, applicant's appeal was rejected. Hence this OA with prayer to quash the order of the disciplinary authority, appellate authority and to direct the Respondents to restore him to the position held by him prior to the order of punishment by the DA.

6. In the reply, the Respondents stoutly opposed the stand of the Applicant. Their stand is that there was no irregularity or illegality in the order of punishment as upheld by the Appellate Authority. The order of punishment was imposed on the applicant after following Rules and principles of natural justice. The Appellate Authority also considered the appeal preferred by the Applicant but in a well reasoned order he declined to interfere with the same. The punishment was imposed on the applicant after due application of mind, complying with the principles of natural justice and taking all aspects into consideration which needs no

interference. Accordingly, Respondents have prayed for dismissal of this
OA.

7. We have considered the rival submission of the parties and perused the materials placed on record. Leaving aside the points raised by the Applicant in his Original Application so also by the learned Counsel appearing for the Applicant in course of hearing, on a cursory glance on the report of the IO vis-à-vis the order of DA upheld by the AA, we find both the order of DA & AA are not sustainable in the eyes of law being contrary to the Rules; firstly because the IO categorically held that the charge is proved to the extent that Sharp reduction in speed has caused the derailment whereas the order of the DA is contrary to what has been held by the IO. In terms of the Rules as also various judge made laws the DA has the prerogative to disagree with the view taken by the IO. But in that event he is bound to issue a show cause, in compliance of natural justice, spelling out the reason as to why he did not agree with the report of the IO. But the said principle has not been followed, in letter and spirit by the DA while communicating the report of the IO to the Applicant. Secondly, it reveals from the record that the DA while imposing the punishment on the applicant has taken into consideration extraneous materials like the past conduct of the Applicant though this was not a part of the charge sheet.

8. In this connection it is profitable to quote some of the decisions of the Hon'ble Apex Court on this issue and which are very much relevant and ought to have been followed by the Respondents.

In the case of **Lav Nigam v Chairman & MD, ITI Ltd and Another**, 2006 SCC (L&S) 1835 the Hon'ble Apex Court held as under:

“13. We have already quoted the extracts from the show cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The Notice to show cause was merely a show cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.”

In the case of **Indu Bhushan Dwivedi v State of Jharkhand and another** (2011) 1 SCC (L&S) 64 the Hon'ble Apex Court held as under:

“One of the basic canons of justice is that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause. As a general rule, an authority entrusted with the task of deciding list between parties are empowered to make an order which prejudicially affects right of any individual or visits him with civil consequences is duty bound to act in consonance with basic rules of natural justice including the one that material sought to be used against person concerned must be disclosed to him and he should be given an opportunity to explain his position. The unwritten right of hearing is fundamental to a just decision, which forms an integral part of concept of rule of law. This right has its roots in notion of fair procedure. It draws attention of authority concerned to imperative necessity of not

overlooking cause which may be shown by the other side before coming to its decision.

In the case of **Mohd Yunus Khan v State of UP and others**, (2011) 1 SCC (L&S) 180 it has been held by the Hon'ble Apex Court as under:

“Punishment for misconduct can be imposed in consonance with statutory rules and principles of natural justice- Statutory authority cannot act whimsically or arbitrarily and its action should be guided by principles of reasonableness and fairness. Requirements of morale, discipline and justice have to be reconciled. Constitution protects not only life and liberty but also dignity of every person. The appellate authority could not consider past conduct of applicant to justify order of punishment passed by the disciplinary authority without bringing it to the notice of appellate authority”.

9. Thus, when the factual scenario is examined against the background of the legal principles set out above, the inevitable conclusion is that the impugned orders are bound to be set aside. Accordingly, the orders of the DA and that of the AA are hereby quashed and set aside. This OA stands allowed to the extent of remitting back the matter to the DA for supplying copy of the report of the IO along with note of disagreement giving adequate opportunity to the applicant to put forth his version on note of disagreement before any order in the disciplinary proceedings is passed. The Applicant, if he feels aggrieved with the order so passed by the DA, may prefer appeal which would be considered by the Appellate Authority as provided under the statute. No costs.

A.K. Patnaik
(A.K.PATNAIK)
Member (Judicial)

C.R. Mohapatra
(C.R.MOHAPATRA)
Member(Admn.)